



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Royal Lepage parkvill-Qualicum Beach Realty  
Ltd and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, FFT

### Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid for its stated purpose?

Are the Tenants entitled to recovery of the filing fee?

Is the Landlord entitled to an order of possession?

### Background and Evidence

The following are agreed or undisputed facts: the tenancy started on October 1, 2019. Rent of \$2,300.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,150.00 as a security deposit. On November 27, 2020 the Tenants received a two-month notice to end tenancy for landlord’s use (the “Notice”). the reason stated on the Notice is that the Landlord or a close family member of the Landlord will occupy the unit. A copy of the Notice was provided as evidence. Landlord PS is the owner of the unit. Landlord PS was in a care home and had gotten

better at the time the Notice was served. Landlord PS has since moved out of the home and is residing in a motor home while waiting to occupy the unit.

The Tenants state that they have no evidence that the Landlord does not intend to occupy the unit. The Tenants state that they have 5 children who are in school near the unit and are concerned about becoming homeless if they have to move out before June 25, 2021. The Tenants confirm that parents of one of the Tenants live in the area however the Tenants state that the house is too small for their family. The Tenants state that when they entered into the tenancy agreement, they were told by the person who rented the unit to them that it would be a long-term tenancy. The Tenants confirm that there is nothing in the tenancy agreement that provides a fixed long term to the tenancy. the Tenants argue that the Landlord could have remained in the care home instead of moving into the unit.

The Landlord states that the unit has been his home for 32 years and wants to live in the unit again as soon as possible. The Landlord asks for an order of possession of the unit as soon as possible and no later than March 31, 2021. The Landlord agrees that the Tenants paid rent for March 2021 and that should they move out before March 31, 2021 the Tenants will be reimbursed that portion of the rent. The Landlord confirms that it is aware that the Tenants are entitled to the equivalent of one month's rent as compensation for having ended the tenancy and agrees that this will be paid to the Tenants.

### Analysis

Section 1 of the Act provides that "landlord" is defined as including the owner of the rental unit. Section 49(3) of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. There is no dispute that the Landlord is not the owner of the unit with rights to end the tenancy under the Act as set out above. The Tenant's evidence of the Landlord's option to live in alternate

accommodation is not evidence of the Landlord having a bad faith intention for ending the tenancy. As the tenancy agreement does not have a fixed term the Landlord was at liberty to end the tenancy as done. Given the Landlord's undisputed evidence of its intention to occupy the unit and without any evidence of any lack of good faith intention on the part of the Landlord to occupy the unit, I find on a balance of probabilities that the Notice is valid for its stated purpose. The Tenants' claim to cancel the Notice is dismissed. As this claim was not successful, I decline to award the Tenants with recovery of the filing fee and in effect the Tenants' application is dismissed in its entirety.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Given the Notice provided as evidence and as there is no dispute of the form and content of that Notice, I find that the required form and content is contained on the Notice. Given both the validity of the Notice and the dismissal of the Tenants' application I find that the Landlord is entitled to an order of possession. Considering the Tenants family situation and the Landlord's acceptance of a later move-out date than

immediately, I grant the Landlord an order of possession effective 1:00 p.m. on March 31, 2021.

Conclusion

The Tenants' application is dismissed

I grant the Landlord an order of possession effective 1:00 p.m. on March 31, 2021. The Tenants must be served with this **Order of Possession**. Should the Tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 02, 2021

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Residential Tenancy Branch